

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 925 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

STATE OF GUJARAT

Versus

PRATAPSIKH SONSINX RAJPUT SOLANKI

Appearance:

MR AJ DESAI, APP, for Petitioner
ABATED for Respondent No. 1
MR PJ MEHTA for Respondent No. 3
NOTICE SERVED for Respondent No. 4

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 29/08/98

ORAL JUDGEMENT

1. The present appeal arises out of the judgment and order of learned Judicial Magistrate, First Class, Danta, passed in Criminal Case No.2453 of 1987 on 12th July, 1990.
2. Following persons were charged to have committed theft of deity of Parvati from the Temple of Jai-Vijay

Mahadev of village Ganchhera of Danta taluka of Banaskantha district.

- (1) Pratapsinh Sonsinh Rajput Solanki
- (2) Vijaykumar Gajendraprasad Agrawal
- (3) Gajendraprasad Madanlal Agrawal
- (4) Thakor Mohanji Alkhaji

3. According to the prosecution deity of Parvati was noticed to be missing at about 11 a.m. on 31st March, 1987 by one Bhopalsinh Jivatsinh Rajput, from the temple of Jai-Vijay Mahadev of village Ganchhera. He, therefore, contacted one Gendas Jetaram Sadhu, who was performing Pooja in the said temple for 3/4 years prior to that date. He informed that on 23rd July, 1997, at about 5 to 6 p.m., some persons came in a jeep car to the temple and dismantled the deity and when they were about to load the same in the jeep car, the Poojari inquired as to where are they taking the deity. He was told that the deity was being taken to Ambaji. The deity was carved out of marble and was dented at the left hand little finger. Bhopalsinh, therefore, informed the Danta police about the same and an offence was registered and investigated by the police. During the course of investigation, police recovered the stolen as well as 21 other statues from one Vijaykumar Gajendraprasad Agrawal of Himatnagar. All these statues and a camera were seized by the police under a Panchnama. Thereafter, one more statue of Ganpati was recovered from village Prantij. A test identification parade was arranged before the Executive Magistrate and, ultimately, the investigating agency, having found sufficient evidence against the accused persons, charged sheeted them.

4. The learned Magistrate, after considering the evidence before him, recorded an order of acquittal against all four accused persons. The State has, therefore, preferred this appeal against that order of acquittal.

5. It may be noted that, pending the appeal, respondents No.1 and 2 - original accused Nos.1 and 2 have expired and the appeal against them is, therefore, ordered to have abated. It is, therefore, to be seen as to whether the appeal against respondents No.3 and 4 can be entertained or not.

6. Mr. A.J. Desai, learned Additional Public Prosecutor appearing for the State, has argued that the evidence of the Executive Magistrate, before whom the test identification parade was performed and that of

witness Banji, Ex.35, needs to be taken into consideration.

7. It transpires that the Poojari, who is the only eye-witness to the alleged theft, has not been examined by the prosecution at the time of trial as he had expired before the evidence could be recorded. The only witness, therefore, who claims to have seen the incident is witness-Banji Nathuji, Ex.35. In the examination-in-chief, he states that he had seen accused No.1 in company of others taking away the deity of Parvati. He also states that he had attended the test identification parade before the Executive Magistrate and he had identified the accused persons. He also identifies the stolen deity of Parvati. In the later portion of his examination-in-chief, he turns around and says that he had not attended any test identification parade and had never identified any accused person before the Executive Magistrate. During cross-examination, he states that when the deity was stolen, he was at a distance of about 500 feet from the temple working in his field. He also admits that he could not identify any of the miscreants. Now, in this regard, if the Panchnama of test identification parade and relevant deposition of the Executive Magistrate is seen, the Executive Magistrate-Popatlal D. Soni, Ex.41, states that the test identification parade was performed in respect of accused Pratapsinh Sonsinh Solanki and accused-Vijaykumar Gajendraprasad Agrawal, who are accused/respondents No.1 and 2, respectively.

8. Barring the above pieces of evidence, there is no direct or indirect or circumstantial evidence to connect present respondents No.3 and 4 with the offence. Remotely speaking, as argued by Mr. Desai, there is Panchnama on record to show that a number of statues were recovered from Himatnagar. But they were recovered from the compound of a cinema hall and there is no evidence to connect present respondents No.3 or 4 with those statues.

9. Under these circumstances, considering the scope of an acquittal appeal, this Court cannot exercise its appellate jurisdiction having found that no error is committed by the learned Magistrate in acquitting the accused persons. Therefore, this appeal must fail.

10. In the result, this appeal is dismissed. The bail bonds of respondents No.3 and 4 shall stand cancelled.

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